
**APPEALS BOARD
UTAH LABOR COMMISSION**

DEANA SHEPARD,

Petitioner,

vs.

E. A. MILLER,

Respondent.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 02-1379

Deana Shepard asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Sessions' denial of Ms. Shepard's claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63-46b-12 and § 34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Ms. Shepard claims workers' compensation benefits for medical problems allegedly resulting from a work-related injury to her left foot that occurred at E. A. Miller on November 18, 2002. Judge Eblen held an evidentiary hearing in this matter, issued interim findings of fact, and then referred the medical aspects of Ms. Shepard's claim to an impartial medical panel.

Judge Eblen resigned from the Commission before the panel issued its report. Judge Sessions was therefore assigned to complete the adjudication of Ms. Shepard's claim. Upon receipt of the panel's report, Judge Sessions accepted the panel's opinion that Ms. Shepard's work accident was not the medical cause of her continuing medical problems. Judge Sessions also concluded that Ms. Shepard had rejected Miller's offer of light-duty work after her accident. For these reasons, Judge Sessions denied Ms. Shepard's claim for temporary total disability compensation.

Ms. Shepard now asks the Appeals Board to review Judge Session's decision. Specifically, Ms. Shepard argues that Judge Sessions' decision is contrary to the preponderance of the medical evidence. She also argues that she did not reject Miller's offer of light-duty work.

FINDINGS OF FACT

The Appeals Board adopts the findings of fact contained in Judge Eblen's interim order and Judge Sessions' final order, as summarized below. The Appeals Board augments the ALJs' findings with additional findings regarding Ms. Shepard's refusal of light-duty work.

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On November 18, 2002, while Ms. Shepard was working for Miller, a plastic cutting board weighing 7 ½ pounds fell on Ms. Shepard's left foot, resulting in a soft-tissue injury to the top of the foot. She received medical attention that same day and periodic follow-up care thereafter. By November 23, 2002, she was released to light-duty work with restrictions against standing and with the requirements that she be allowed to elevate her left foot and to apply an ice bag to the foot occasionally.

After Ms. Shepard received the foregoing light-duty release, Miller brought her back to work with the assignment of sitting on the office floor and picking staples out of the carpet. After a few days, Ms. Shepard and her supervisor became involved in a dispute regarding Ms. Shepard's work attendance. Ms. Shepard informed the supervisor that she was leaving work to obtain medical documentation she believed was relevant to the dispute. The supervisor told Ms. Shepard she would be discharged if she left work. Despite this warning, Ms. Shepard left work. Miller then discharged her.

Ms. Shepard has continued to receive medical care since her injury. Although she complains of pain and physical limitations that she attributes to her work injury, the preponderance of evidence, including the medical panel report, establishes that Ms. Shepard reached medical stability from her work injury by February 28, 2003. The preponderance of evidence also establishes that she neither required further medical care thereafter for her work injury nor suffered any permanent impairment as a result of the work injury.

DISCUSSION AND CONCLUSIONS OF LAW

There is no question that Ms. Shepard suffered a work-related injury to her left foot while working at Miller on November 18, 2003. That injury is compensable under the Utah Workers' Compensation Act. What is now in dispute is the extent to which Ms. Shepard is entitled to medical care for the injury and whether she forfeited her right to temporary total disability compensation by rejecting Miller's offer of light-duty work.

Medical care. Section 34A-2-418 of the Act requires employers or their insurance carriers to pay the reasonable expense of medical care "necessary to treat" an employee's work-related injuries. Although Ms. Shepard argues that she required medical care after February 28, 2003, to treat her work injury, the medical panel reached a different opinion. Ms. Shepard asks the Appeals Board to disregard the medical panel's opinion and accept other evidence that purportedly supports her claim for additional medical care. However, the Appeals Board finds the medical panel's opinion to be persuasive. The panel consisted of three impartial physicians with expertise in the medical specialties that are relevant to Ms. Shepard's claim. The panelists had access to all Ms. Shepard's medical records, as well as the opinions of other medical experts who had treated or examined her in the past. The panelists also personally examined Ms. Shepard. The panel's opinion is supported by the evidentiary record and well-reasoned. The Appeals Board therefore accepts the panel's opinion

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that Ms. Shepard's medical care after February 28, 2003, was not necessary to treat her work-related injury.

Temporary total disability compensation. Ms. Shepard also contends that she is entitled to temporary total disability compensation after her accident. Judge Sessions' denied this claim on the grounds Ms. Shepard had rejected light-duty work provided by Miller. Ms. Shepard argues that she did not reject Miller's light-duty work but instead was fired by Miller without justification.

Section 34A-2-410(1)(a) of the Utah Workers' Compensation Act establishes the general right of injured workers to receive compensation "in case of temporary disability, so long as the disability is total," This provision must be interpreted in light of two decisions by the Utah Supreme Court. In *Entwistle Co. v. Wilkins*, 626 P.2d 495, 498 (Utah 1981), the Court held that an injured worker's temporary disability "may be found to be total if he can no longer perform the duties of the character required in his occupation prior to his injury." In *Booms v. Rapp*, 720 P. 2d 1363, 1366 (Utah 1986), the Court ruled that "once a claimant reaches medical stabilization, the claimant is moved from temporary to permanent status and he is no longer eligible for temporary benefits."

Ms. Shepard's left-foot injury prevented her from performing the same work duties at Miller as she had been performing before the accident. Consequently, her presumptive right to temporary total disability compensation began at the time of her accident and continued until she reached medical stability on February 28, 2003. However, this right to temporary total disability compensation is described as "presumptive" because another statutory provision, § 34A-2-410(2), allows an employer to avoid paying temporary total disability compensation by providing light-duty work for an injured worker. Section 34A-2-410(2) states:

In the event a light duty medical release is obtained prior to the employee reaching a fixed state of recovery, and when no light duty employment is available to the employee from the employer, temporary disability benefits shall continue to be paid.

The foregoing statutory provision establishes two conditions that must be met before an employer is excused from paying temporary total disability compensation. First, the injured worker must have a medical release to perform some type of light-duty work. Second, the employer must make such light- duty work available to the injured worker. It is undisputed that Ms. Shepard had received a medical release for light-duty work, thereby satisfying the first condition of §34A-2-410(2). As to the second condition, the record establishes that Miller made light-duty work available to Ms. Shepard. However, by leaving that work in direct violation of her employer's instructions and with knowledge that her action would result in termination, Ms. Shepard rejected the work and forfeited her entitlement to temporary total disability compensation.

Summary. For the reasons discussed above, the Appeals Board concurs with Judge Sessions' determination that Ms. Shepard is not entitled to additional medical benefits in connection with her

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work-related left-foot injury. The Appeals Board also concurs with Judge Sessions' denial of Ms. Shepard's claim to additional temporary total disability compensation for that injury.

ORDER

The Appeals Board affirms Judge Sessions' decision. It is so ordered.

Dated this 3rd day of December, 2007.

Colleen S. Colton, Chair

Patricia S. Drawe

Joseph E. Hatch